

REMARKS

The Office Action mailed March 30, 2007 has been carefully reviewed and the following remarks been made in consequence thereof.

Claims 1-20 are now pending in this application. Claims 1-20 stand rejected.

The rejection of Claims 1-20 under 35 U.S.C. § 103(a) as being unpatentable over "User's Guide to ROADNET 5000" (1996) (hereinafter referred to as "Roadnet") is respectfully traversed.

Roadnet describes a routing and scheduling system. For a given route, a user may define the number of stops, geographic information, run time/length, driver information, and the capacity of truck. For each stop, the user may define the customer's preferred times of delivery, actual and projected time to unload at the stop, and number and sizes of the orders at the stop. Geographic information includes zip code, state, and/or zone of the route. Run time may include actual and projected time to unload at the stop, fixed/variable time, travel time, service time, time from stop to stop, break time, and/or comments concerning events that affect service time. The "fixed time" is the time to deliver goods without handling the goods, and the "variable time" is the time to deliver goods to the stop, including handling the goods. Driver information may include whether the driver has a helper and performance indicators, including estimated and actual service times, travel times, number of pieces delivered, routes, and/or stops. The capacity of the truck is based on the general size and general category of a box. The size may be defined as "small," "medium," and/or "large," and the category may be defined as "frozen," "refrig," and/or "dry." The capacity is determined by how many of each size and each category of box the truck can accommodate. An equivalency package size may be designated to standardize the sizes and/or categories of boxes.

Roadnet further describes that a driver's performance may be viewed with respect to the route and/or stop. Further, the user may move an order at a stop from a first route to a second route by dragging and dropping the order from a first route window to a second route window. For each route, whether a truck is over capacity, the percentage of capacity, the number of each size box, travel time, and/or run time may be displayed.

Additionally, beginning on page 17 of the Office Action, the Examiner took Official Notice that "it is old and well known that goods, for example major appliances, require delivery and installation wherein not all major appliances are the same size nor require the same installation procedures." Further, the Examiner took Official Notice that "it is a common business practice to account for the installation requirements of the goods to be delivered and installed either expressly or intuitively." Moreover, the Examiner took Official Notice that, by asking the customer questions, "installers are implicitly attempting to gauge the difficulty of delivering and installing the major appliance in order to better understand the installation/delivery requirements."

The Examiner also took Official Notice that "it would have been obvious to one skilled in the art at the time of invention that the system and method for goods delivery management as taught by the ROADNET . . . would have been benefited from taking into account the 'degree of installation difficulty' in view of the teachings of official notice."

Applicants traverse the use of such Official Notice. MPEP section 2144.03 indicates that use of Official Notice should be rare, and that:

[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known . . . the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute."

MPEP Section 2144.03.

Applicants submit that the Official Notice provided in the Office Action does not include facts that are capable of instant and unquestionable demonstration as to defy dispute. Applicants submit that the assertion that "it would have been obvious to one skilled in the art at the time of invention that the system and method for goods delivery management as taught by the ROADNET . . . would have been benefited from taking into account the 'degree of installation difficulty' in view of the teachings of official notice," is not a fact that is capable of instant and unquestionable demonstration as to defy dispute. Further, Applicants submit that delivering goods does not necessarily entail delivery and installation of the goods, and, as such, the assertions that "it is old and well known that goods, for example major appliances, require delivery and installation" and that "it is a common business practice to account for the

installation requirements of the goods to be delivered and installed either expressly or intuitively" are not facts that are capable of instant and unquestionable demonstration as to defy dispute.

Accordingly, Applicants submit that the Official Notice taken in the Office Action is improper. Applicants further respectfully request that the Examiner provide documentary evidence to support such Official Notice.

Claim 1 recites a method of displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, the method implemented by a computing unit and comprising the steps of "... calculating a first delivery capacity for said delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, each slot defining a slot volume; assigning a work unit to each of the plurality of goods indicative of a portion of the first volume defined by a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; calculating, by the computing unit, a portion of the first delivery capacity used for said delivery agent information based on assigned work units; ... determining whether the first delivery capacity of the delivery agent to deliver the goods during a first period is exceeded; determining whether a second delivery capacity of the delivery agent to deliver the goods during a second period is exceeded; and determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity."

Neither Roadnet nor the Examiner's Official Notice, considered alone or in combination, describes or suggests a method of displaying the capacity utilization of a goods delivery system as recited in Claim 1. More specifically, neither Roadnet nor the Examiner's Official Notice, considered alone or in combination, describes or suggests a method that includes calculating a first delivery capacity for delivery agent information, *the first delivery capacity including a first volume defined by a first plurality of slots, each slot defining a slot volume.* (Emphasis added.) Further, neither Roadnet nor the Examiner's Official Notice, considered alone or in combination, describes or suggests a method that includes *assigning a work unit to each of the plurality of goods* indicative of a portion of a first volume defined by a number of slots used to deliver each good, *the work unit based on at least one of a size of*

the good and a degree of difficulty in installing the good. (Emphasis added.) Moreover, neither Roadnet nor the Examiner's Official Notice, considered alone or in combination, describes or suggests a method that includes calculating, by the computing unit, a portion of a first delivery capacity used for delivery agent information *based on assigned work units.* (Emphasis added.) Rather, in contrast to the present invention, Roadnet describes defining the capacity of a truck based on the general size of a box and the general category of the box, and the Examiner's Official Notice merely describes that major appliances each may require a different length of time for installation. The general size of a box and the general category of the box described in Roadnet are not a first volume defined by a first plurality of slots, wherein each slot defines a slot volume. The length of time for installation described in the Examiner's Official Notice is not a work unit based on at least one of a size of the good and a degree of difficulty in installing the good.

In addition, neither Roadnet nor the Examiner's Official Notice, considered alone or in combination, describes or suggests a method that includes determining to deliver goods during a second period upon determining that a first delivery capacity is exceeded and a second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity. Rather, in contrast to the present invention, Roadnet describes a user moving one stop from a first route to a second route, and the Examiner's Official Notice merely describes that major appliances each may require a different length of time for installation.

Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Roadnet in view of the Official Notice.

Claims 2-9 depend, directly or indirectly, from independent Claim 1. When the recitations of Claims 2-9 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-9 likewise are patentable over Roadnet in view of the Official Notice.

Claim 10 recites a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, the computer program comprising at least one code segment for employing a method of displaying the capacity utilization comprising the steps of "... calculating a first

delivery capacity for said delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, each slot defining a slot volume; assigning a work unit to each of the plurality of goods indicative of a portion of said first volume defined by a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; calculating a portion of the first delivery capacity used for said delivery agent information based on assigned work units; . . . determining whether the first delivery capacity of the delivery agent to deliver the goods during a first period is exceeded; determining whether a second delivery capacity of the delivery agent to deliver the goods during a second period is exceeded; and determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity.”

Neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests a computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system as recited in Claim 10. More specifically, neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests a computer program having at least one code segment for employing a method of displaying the capacity utilization that includes calculating a first delivery capacity for delivery agent information, *the first delivery capacity including a first volume defined by a first plurality of slots, each slot defining a slot volume.* (Emphasis added.) Further, neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests a computer program having at least one code segment for employing a method of displaying the capacity utilization that includes that includes *assigning a work unit to each of the plurality of goods* indicative of a portion of a first volume defined by a number of slots used to deliver each good, *the work unit based on at least one of a size of the good and a degree of difficulty in installing the good.* (Emphasis added.) Moreover, neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests a computer program having at least one code segment for employing a method of displaying the capacity utilization that includes that includes calculating a portion of a first delivery capacity used for delivery agent information *based on assigned work units.* (Emphasis added.) Rather, in contrast to the present invention, Roadnet describes defining the capacity of a truck based on the general size of a box and the general category of the box, and the

Examiner's Official Notice merely describes that major appliances each may require a different length of time for installation. The general size of a box and the general category of the box described in Roadnet are not a first volume defined by a first plurality of slots, wherein each slot defines a slot volume. The length of time for installation described in the Examiner's Official Notice is not a work unit based on at least one of a size of the good and a degree of difficulty in installing the good.

In addition, neither Roadnet nor the Examiner's Official Notice, considered alone or in combination, describes or suggests a computer program having at least one code segment for employing a method of displaying the capacity utilization that includes determining to deliver goods during a second period upon determining that a first delivery capacity is exceeded and a second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity. Rather, in contrast to the present invention, Roadnet describes a user moving one stop from a first route to a second route, and the Examiner's Official Notice merely describes that major appliances each may require a different length of time for installation.

Accordingly, for at least the reasons set forth above, Claim 10 is submitted to be patentable over Roadnet in view of the Official Notice.

Claims 11-18 depend, directly or indirectly, from independent Claim 10. When the recitations of Claims 11-18 are considered in combination with the recitations of Claim 10, Applicants submit that dependent Claims 11-18 likewise are patentable over Roadnet in view of the Official Notice.

Claim 19 recites an apparatus for displaying the capacity utilization of a goods delivery system, the goods delivery system having at least one delivery agent location, address and delivery zone, the apparatus for displaying the capacity utilization comprising "... means for calculating a first delivery capacity for said delivery agent information, the first delivery capacity comprising a first volume defined by a first plurality of slots, each slot defining a slot volume; means for assigning a work unit to each of the plurality of goods indicative of a portion of said first volume defined by a number of slots used to deliver each good, the work unit based on at least one of a size of the good and a degree of difficulty in installing the good; means for calculating a portion of the first delivery capacity used for said delivery agent information based on assigned work units; ... means for determining whether

the first delivery capacity of the delivery agent to deliver the goods during a first period is exceeded; means for determining whether a second delivery capacity of the delivery agent to deliver the goods during a second period is exceeded; and means for determining to deliver the goods during the second period upon determining that the first delivery capacity is exceeded and the second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity.”

Neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests an apparatus for displaying the capacity utilization of a goods delivery system as recited in Claim 19. More specifically, neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests an apparatus that includes means for calculating a first delivery capacity for delivery agent information, *the first delivery capacity including a first volume defined by a first plurality of slots, each slot defining a slot volume.* (Emphasis added.) Further, neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests an apparatus that includes that includes *means for assigning a work unit to each of a plurality of goods* indicative of a portion of a first volume defined by a number of slots used to deliver each good, *the work unit based on at least one of a size of the good and a degree of difficulty in installing the good.* (Emphasis added.) Moreover, neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests an apparatus that includes that includes means for calculating a portion of a first delivery capacity used for delivery agent information *based on assigned work units.* (Emphasis added.) Rather, in contrast to the present invention, Roadnet describes defining the capacity of a truck based on the general size of a box and the general category of the box, and the Examiner’s Official Notice merely describes that major appliances each may require a different length of time for installation. The general size of a box and the general category of the box described in Roadnet are not a first volume defined by a first plurality of slots, wherein each slot defines a slot volume. The length of time for installation described in the Examiner’s Official Notice is not a work unit based on at least one of a size of the good and a degree of difficulty in installing the good.

In addition, neither Roadnet nor the Examiner’s Official Notice, considered alone or in combination, describes or suggests an apparatus that includes means for determining to deliver goods during a second period upon determining that a first delivery capacity is

exceeded and a second delivery capacity is not exceeded, wherein the goods are configured to utilize the entire second delivery capacity. Rather, in contrast to the present invention, Roadnet describes a user moving one stop from a first route to a second route, and the Examiner's Official Notice merely describes that major appliances each may require a different length of time for installation.

Accordingly, for at least the reasons set forth above, Claim 19 is submitted to be patentable over Roadnet in view of the Official Notice.

Claim 20 depends from independent Claim 19. When the recitations of Claim 20 are considered in combination with the recitations of Claim 19, Applicants submit that dependent Claim 20 likewise is patentable over Roadnet in view of the Official Notice.

In addition, Applicants respectfully submit that the Section 103 rejection of Claims 1-20 is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify the routing and scheduling system of Roadnet with the teaching of the Official Notice to arrive at the present invention. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the Applicant." In re Kotzab, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000); MPEP 2143.01.

Further, as is well established, the mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. See In re Gordon, 221 USPQ2d 1125 (Fed. Cir. 1984). The Federal Circuit has determined that:

[i]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

In re Fritch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 147

USPQ 391, 393 (CCPA 1965). Rather, some suggestion to combine such references and a reasonable expectation of success must both be found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 USPQ2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the cited art, or any reasonable expectation of success has been shown.

Specifically, there is no suggestion or motivation within Roadnet or the Official Notice to combine the teachings of the Official Notice with Roadnet to produce the claimed invention. Accordingly, since there is neither a teaching nor a suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants respectfully request that the Section 103 rejection of Claims 1-20 be withdrawn.

Further, with respect to Claims 2, 6, 9, 11, 15, and 18, the Examiner alleges that "labels used to describe the various delivery agent statistics merely represent non-functional descriptive material and are not functionally involved in the steps recited nor do they alter the recited structural elements." It is further alleged that "the structural elements remain the same regardless of the specific label used to describe the calculated delivery agent statistics. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability." However, Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection.

MPEP 2106.01 states that "[n]onfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data," and that nonfunctional descriptive material that has a functional and structural interrelationship with other claimed aspects of the invention is statutory subject matter. Further, "[t]he presence of the claimed nonfunctional descriptive material is not necessarily determinative of nonstatutory subject matter." The Federal Circuit has stated:

[w]hat is required is the existence of *differences* between the [claims] and the prior art sufficient to establish patentability. The bare presence or absence of a specific functional relationship, without further analysis, is not dispositive. Rather, the critical question is whether there exists any new

unobvious functional relationship between the printed matter and the substrate. (Emphasis in original).

In re Gulack, 217 USPQ 401, 404 (Fed. Cir. 1983). Further, the MPEP, at 2106.01, instructs USPTO personnel to "consider all claim limitations when determining patentability of an invention over the prior art," and to "be prudent in applying the [nonfunctional descriptive material rejection] guidance."

Further, MPEP 2114 recites:

[w]hile features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. In re Schreiber, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997); see also In re Swinehart, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." Hewlett-Packard Co. v. Bausch & Lomb Inc., 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original).

It is the Examiner's burden to establish the absence of a novel, nonobvious functional relationship to produce a *prima facie* case of unpatentability. In re Lowry, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). Applicants respectfully submit that the Examiner has not established the absence of a novel, nonobvious functional relationship between the recitations of Claims 2, 6, and 9 and the method of displaying the capacity utilization of a goods delivery, nor between the recitations of Claims 11, 15, and 18 and the computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system.


Applicants further respectfully submit that the recitations of Claims 2, 6, and 9 are functionally and structurally interrelated to the other claimed aspects of the invention. More specifically, the recitations with respect to displaying delivery agent statistics and delivery agent information are interrelated with the method of displaying the capacity utilization of a goods delivery as recited in Claim 1, from which Claims 2, 6, and 9 depend. Displaying delivery agent statistics and displaying delivery agent information are functionally and structurally related to the method of displaying the capacity utilization of a goods delivery.

Applicants further submit that the recitations of Claims 11, 15, and 18 are functionally and structurally interrelated to the other claimed aspects of the invention. More specifically, the recitations with respect to displaying delivery agent statistics and delivery agent information are interrelated with the computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system as recited in Claim 10, from which Claims 11, 15, and 18 depend. Displaying delivery agent statistics and displaying delivery agent information are functionally and structurally related to characteristics of the computer program embodied on a computer readable medium for executing a computer process for displaying the capacity utilization of a goods delivery system.

For at least the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claims 1-20 be withdrawn.

In view of the foregoing amendment and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully submitted,



Eric T. Krischke
Registration No. 42,769
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070